REMARKS

Status of case

Claims 1-5 and 8-41 are currently pending in this case. In this amendment, claims 1-5, 8-15, 18, 20, 22-27 and 35-41 are amended.

Rejections under 35 U.S.C. §112

Claims 1-41 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. The Office Action stated that the phrase "a marginal value . . ." recited in the claims was not disclosed in applicants' specification. Applicants respectfully disagree that the specification fails to disclose the phrase "a marginal value . . ." Applicants note page 7 line 19 to page 8, line 25 as merely one example of support in the specification for the limitation. In order to advance prosecution, applicants amend claims 1, 35, 40 and 41 to clarify the limitation at issue. Claim 27 did not recite the limitation at issue. No new matter has been added by this amendment.

Rejections under 35 U.S.C. §103

Claims 1-41 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,343,277 (Gaus et al.) in view of U.S. Patent 6,047,274 (Johnson et al.). For claims 1-26, 40 and 41, the Office Action stated that the Gaus reference teaches all of the recited limitations except for details of meter reading, billing processes, and the claimed determination of the clearing price. Moreover, the Office Action stated that the Johnson reference teaches a system for collecting meter reading at the end user and teaches a determination of the clearing price that is equal for all market services customers. For claims 27-39, the Office Action stated that the Guas reference teaches all of the recited limitations except meter reading, billing processes, the claimed determination of the clearing price, power generation, and effecting power generation. The Office Action stated that the Johnson reference teaches the elements of metering and billing, and discloses "the adjustment of power availability by providers based on end users' actual usage data available to them through the disclosed system."

The Gaus reference teaches a computer-assisted method of facilitating a transaction between energy consumers desiring energy contracts and energy suppliers. Consumers may submit orders to buy energy, and energy suppliers may bid online to fill the orders. The consumers may monitor the energy supplier bidding process and may select the winning bid.

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See col. 5, lines 47-53. The Johnson reference teaches an auction service between energy suppliers wherein a clearing price is determined by a central facility (termed a pool controller) for members of an energy pool (pool members), as discussed in the following excerpt:

> In many states or geographic regions, local electric utilities have formed wholesale power pools in which they share power, as needed, with other members of the pool under arrangements and according to rules previously agreed to by all the members. . . . The pool controller in some cases, for example, will advise the pool members on one day of the power he expects to need during each hour of the following day, in order to satisfy the projected aggregate demand on the pool's combined grid by the utilities' customers. Each member is invited to submit offers (quantities and prices) of the power it is willing to supply to the combined grid. Starting with the lowest-priced power first, the controller accepts such offers until he reaches the aggregate quantity he needs for each hour of the next day. Typically, the clearing price--the price of the last unit of power needed by the controller to meet his projected demand for each hour--is used to set the price that all suppliers for that hour will receive, notwithstanding that some of the accepted offers were at prices lower than the clearing price.

Col. 4, lines 14-38.

Claim 1, as currently written, distinguishes over the cited references in several respects. First, claim 1 recites a calculation of the clearing price and settlement based on real-time conditions for the predetermined interval. In one embodiment, the system operator may forecast what the system load should be for a specific time period in the following day. For example, the system operator may forecast for hour 10 on the following day a total system load of 500 MWh based on historical data, the weather forecast, etc. See pg. 8, lines 3-5 of the application. Based on the forecast, market service providers, such as generation units, may submit supply side bids and consumers may submit demand side bids. On the actual trading day, the system operator may determine that a real time condition is different from the collected bids. As merely one example, the system operator may determine that the real-time load is greater than forecasted. Specifically, the system operator may determine for hour 10 that the real-time load is actually 600 MWh instead of the forecasted 500 MWh. See pg. 8, lines 15-16 of the application. Or, the system operator may determine that one of the market service providers that submitted a bid is unable to provide services. For example, Generation Unit C may be shut down for emergency maintenance, resulting in the remaining generation units to provide service. See pg. 8, lines 17-18 of the application. These real-time conditions may be determined for the predetermined interval ("determining at least one real time condition for the predetermined time interval that is different from at least one quantity of the supply side bids or quantity of the demand side bids"). The real-time condition may affect the market services dispatched ("dispatching market services

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for the predetermined time interval based on the real time condition"), the clearing price calculated ("calculating a clearing price for the dispatched market services"), and the settlement calculated ("calculating settlement information based upon the clearing price calculated").

Second, claim 1 recites that the clearing price is determined after dispatch of the services. In particular, claim 1 recites "calculating a clearing price for the dispatched market services". As discussed in the application, "the spot price is determined 'ex-post', i.e., after the dispatch process. The final clearing prices in the pool are determined by what actually happens on the trading day, not what was projected at the time the original schedule was published." Pg. 7, lines 19-22.

By contrast, the Johnson reference discloses calculating a clearing price based on non-real-time conditions. As shown in the excerpt above, the clearing price is calculated prior to real-time, so that any calculation of the clearing price does not account for any real-time conditions. Further, the Johnson reference teaches calculating the clearing price prior to dispatch of services. Thus, claim 1 as currently written distinguishes over the cited references. Moreover, claims 2-26, which ultimately depend on claim 1, distinguish over the cited references for at least the reasons discussed.

Claim 27, as currently written, distinguishes over the cited references in several respects. First, claim 27, similar to claim 1, recites a settlement component that "determines at least one real time condition for the predetermined time interval that is different from at least one of the submitted bids" and that "determines an equal energy services clearing price . . . based on the real time condition for the predetermined time interval". As discussed above, the cited references, including the Johnson reference, fail to teach or suggest calculating the clearing price based on a real-time condition. Second, claim 27 recites "a bid component . . . determining an economic merit order for at least some of the bids from the energy services providers". In one embodiment, submitted bids may be assigned an economic merit order. The economic merit order may be published and/or used to determine which market service providers in the pool will dispatch services. See page 7, line 26 – page 8, line 10. By contrast, none of the cited references teach or suggest an economic merit order for submitted bids which determines which market service providers in the energy pool will dispatch services. Therefore, claim 27 as currently written distinguishes over the cited references. Moreover, claims 28-34, which ultimately depend on claim 27, distinguish over the cited references for at least the reasons discussed.

Similarly, claim 35 distinguishes over the cited references. Claim 35 recites: (1) an

economic merit order for at least some of the supply bids ("determining an economic merit order for at least a portion of the supply side bid information"); (2) a determination of real time conditions ("determining an economic merit order for at least a portion of the supply side bid information"); (3) a schedule of services based on the economic merit order and real time conditions (scheduling the operation of units . . . according to the real time condition, and according to the economic merit order"); (4) a calculation of the clearing price based on real-time condition for the predetermined interval ("the clearing price is a price for a supply side bid at which quantities for supply side bids equals the market services deployed in step (f)"); and (5) a clearing price determined after dispatch of the services ("the clearing price is a price for a supply side bid at which quantities for supply side bids equals the market services deployed in step (f)"). As discussed above, none of these limitations is taught or suggested in the cited art. Therefore, claim 35 as currently written distinguishes over the cited references. Moreover, claims 36-39, which ultimately depend on claim 35, distinguish over the cited references for at least the reasons discussed.

Likewise, claims 40 and 41 recite (1) an economic merit order for at least some of the supply bids; (2) a determination of a real time condition; (3) a schedule of services based on the economic merit order and real time condition; and (4) a calculation of the clearing price based on real-time condition for the predetermined interval. Claim 41 further recites calculating the clearing price after dispatch of services. For the reasons discussed above, claims 40 and 41 distinguish over the cited references.
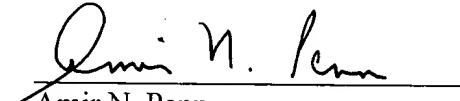
Executed 1449 Form

Applicants submitted an information disclosure statement on January 31, 2000. For the convenience of the Examiner, applicants include a copy of the PTO 1449 form which was submitted with the information disclosure statement. Applicants request that the enclosed form be marked as considered.

SUMMARY

Applicants submit that based on the foregoing remarks, the rejections have been traversed, and that the claims are in condition for allowance. Should there be any remaining formalities, the Examiner is invited to contact the undersigned attorneys for the Applicants via telephone if such communication would expedite this application.

Respectfully submitted,

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FORM 1449* INFORMATION DISCLOSURE STATEMENT IN AN APPLICATION (Use several sheets if necessary)	Docket Number: 8567.72US01	Application Number: 09/421,713
	Applicant: WINTER ET AL.	
	Filing Date: 10/20/1999	Group Art Unit: 2761

U.S. PATENT DOCUMENTS

EXAMINER INITIAL	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	5,794,212	08/11/1998	Mistr, Jr.			
·						
				RECEIVED		
				FEB 1 0 2004		
				GROUP 3600		

FOREIGN PATENT DOCUMENTS

	DOCUMENT NO.	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
						YES	NO
·							

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

·		"Nortel (Nortel Networks) to Offer Innovative Energy Management applications for Utilities TeCom and Whisper to Provide Key Enabling Products and Technologies", http://www.teco.net/tecom/INNwsNortelUtil.html, updated 01/25/2000, pp. 1–3.
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EXAMINER	DATE CONSIDERED

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form for next communication to the Applicant.

*Substitute Disclosure Statement Form (PTO-1449)

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